

January 11, 1985

RCRA RSI#2: EXTENSION OF INTERIM AUTHORIZATION HAZARDOUS  
WASTE PROGRAMS

SUBJECT: RCRA Reauthorization Statutory Interpretation #2:  
Extensions of Interim Authorization of State  
Hazardous Waste Programs

FROM: Jack W. McGraw  
Acting Assistant Administrator

TO: Regional Administrators  
Regions I-X

The Hazardous and solid Waste Amendments of 1984 extend the interim authorization period to January 31, 1986. Each Regional Administrator has extended the previous deadline (January 26, 1985) for some States for good cause (see 40 CFR 271.122(c)). In the absence of a further extension, interim authorization for these States' hazardous waste programs will expire on the previously published deadlines. At that point, reversions of the States' programs to Federal control would be automatic.

Extensions for "good cause" were typically granted to States which encountered unforeseen difficulty in developing RCRA equivalent programs or encountered difficulty in submitting their applications for authorization. Any further extensions should be granted on that basis also.

Should you decide to extend the authorization deadline for certain States, we have attached for your reference a sample Federal Register notice for announcing their extensions. Where you wish to grant extensions, the notices must be published by January 26, 1985, in order to avoid termination of interim authorization on that date.

Attachment

cc: Hazardous Waste Division Directors, Regions I-X

Hazardous Waste Branch Chiefs, Regions I-X

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(SAMPLE NOTICE)

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

Hazardous Waste Management Program; Extensions of  
Application Deadline for Final Authorization

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Extension of Phase I and II Interim Authorization  
for California, Guam, and Nevada.

SUMMARY: EPA previously granted an extension of interim authorization to January 26, 1985, for the States of California and Nevada, and the Territory of Guam. These States and Guam recently requested a further extension of interim authorization beyond the January 26, 1985 deadline. This extension would allow for continuation of their interim authorization under the Resource Conservation and Recovery Act (RCRA), as amended. EPA is granting the requested extension to avoid the reversion, on January 26, 1985, of their interim authorization. This notice extends California's Phase I and IIB, Nevada's Phase I, IIA and B, and Guam's Phase I interim authorization until January 31, 1986, or until the date these States and Guam receive final

authorization, whichever is earlier.

EFFECTIVE DATE: [Date of publication]

FOR FURTHER INFORMATION: Chuck Flippo, RCRA Programs Branch,  
Environmental Protection Agency Region IX,  
215 Fremont Street, San Francisco, CA 94105, telephone  
(415) 974-8128.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260, 263, and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270

(procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks, and, in certain instances (see California section below for discussion), for surface impoundments and waste piles as well. Phase II B covers incinerator facilities, and Phase II C addresses landfills and land treatment facilities.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

40 CFR 271.122(c)(4) requires State which have received any, but not all, phase/components of interim authorization to have amended their original submissions by July 26, 1983, to

include all components of Phase II. (See 47 FR 32377, July 26, 1982.) Further, 40 CFR 271.137(a) provides that interim authorization automatically terminated (reverted) on July 26, 1983, unless the State had submitted an application for all phases/ components of interim authorization by that date. (See 47 FR 32178, July 26, 1982.) Where the authorization (approval) of the State program reverts, EPA is to administer and enforce the Federal program in the State.

However, 40 CFR 271.137(a) also allowed the Regional Administrator to extend the July 26, 1983, deadline for good cause so that the State program would not revert to EPA. A Regional Administrator could not, however, extend the deadline past January 26, 1985, as 40 CFR 271.122(b) provides that interim authorization of a State's hazardous waste program ends 24 months from the effective date of the last component of Phase II. The last component of the Phase II regulations was published on July 26, 1982. It became effective on January 26, 1983; thus, interim authorization was to end on January 26, 1985. (See 47 FR 32365, July 26, 1982.)

The Hazardous and Solid Waste Amendments of 1984 (PL-98-616, Nov. 8, 1984), amended Section 3006(c) to allow interim authorization to extend to January 31, 1986. Therefore,

the Regional Administrator has authority to extend a State's interim authorization to January 31, 1986, in appropriate cases.

## California

California received Phase I interim authorization on June 4, 1981, and Phase II A interim authorization on January 11, 1983. The State's Phase II authorization includes only responsibility for permitting storage and treatment in tanks and containers. It does not include responsibility for permitting:

- 1) treatment in surface impoundments, waste piles, land treatment facilities, or incinerators;
- 2) storage in surface impoundments or waste piles;
- or 3) disposal facilities.

The State chose to apply for final authorization in lieu of additional increments of interim authorization.

EPA granted California's request for an extension of interim authorization until January 26, 1985, because the State had made a good faith effort to pursue regulatory and statutory amendments necessary to secure final authorization. This effort constituted "good cause" for extending the State's deadline for submission of their application for final authorization.

(See 49 FR 33018, August 20, 1984.) The State then expected

to submit its application in September 1984; however the State subsequently encountered significant delays in adopting the necessary three sets of regulations under two different statutes due to a lengthy public hearing process and extensive public interest in the regulations. California now intends to submit its official application by July 1985 after submitting a draft application in March 1985. California expects to receive final authorization by January 31, 1986.

#### Guam

The Territory of Guam received Phase I interim authorization on May 16, 1983. Guam chose to apply for final authorization rather than apply for Phase II interim authorization. Before submitting a final authorization application, the Territory needed to adopt both statutory and regulatory amendments. Guam requested and was granted an extension to submit their complete application and gain final authorization by January 26, 1985. Because the Territory had encountered significant delays in developing and adopting the necessary regulatory and statutory amendments, but had made a good faith effort to pursue those amendments, good cause was shown to allow extension of the deadline for obtaining final authorization to January 26, 1985. (See 49 FR 33018, August 20,

1984.) The Territory expects to receive final authorization by July 1985.

## Nevada

Nevada received interim authorization for Phase I, II A and II B on July 19, 1983. The State chose to apply for final authorization rather than apply for Phase II C interim authorization. Revisions to the State's regulations, needed to meet the requirements for final authorization, were completed in June 1984. The State then planned to submit an official final authorization application in July 1984. The State requested and was granted an extension to this deadline because the State encountered significant delays in completing the statutory amendment necessary to secure final authorization. The State's biennial legislature and limited (60 day) legislative term added to the State's difficulty in gaining approval of the necessary statutory amendments. The State's good faith effort to pursue the necessary statutory amendment constituted good cause for extension of the State's deadline for gaining final authorization to January 26, 1985. (See 49 FR 33018, August 20, 1984.) The State now intends to submit its official application for final authorization by December 1984 and



receive final authorization by July 1985.

DECISION:

In consideration of the above schedules and the States' continued good faith efforts to adopt hazardous waste programs necessary to obtain final authorization, the immediate reversion of these State programs because of their failure to meet the January 26, 1985, deadline is not in the best interest of California, Guam, or Nevada, this Agency, the regulated community, or the citizens of California, Guam, or Nevada. I have found good cause to extend the deadline for the final determination on the final authorization applications for California, Guam, and Nevada, until [insert appropriate date for each State and Guam]; after that, responsibility for implementing RCRA reverts to Federal control if they have not received final authorization.

EXECUTIVE ORDER 12291: The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3, Executive Order 12291.

CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this extension will not have a significant economic impact on a substantial number of small entities. The extension

effectively suspends the applicability of certain Federal regulations in favor of these States' programs, thereby eliminating duplicative requirements for handlers of hazardous waste in California, Guam, and Nevada. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

LIST OF SUBJECTS IN 40 CFR PART 271: Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

AUTHORITY: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974.

DATED:

Judith E. Ayres  
Regional Administrator

BOOZ•ALLEN & HAMILTON  
FAXBACK 12361

